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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 48A04-0711-CR-635

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0506-FC-284

MAY 14, 2008

HOFFMAN, Senior Judge

Brady King appeals the sentence imposed after he pleaded guilty to sexual misconduct with a minor as a class D felony and contributing to the delinquency of a minor as a class A misdemeanor. We affirm.

The sole issue for our review is whether the trial court erred in sentencing King.

On June 3, 2005, twenty-two-year-old King invited underage girls to his hotel room and provided them with alcohol. At some point during the evening, King made sexual advances towards an intoxicated fifteen-year-old J.T. and fondled her. The State charged King with sexual misconduct with a minor as a class C felony and contributing to the delinquency of a minor as a class A misdemeanor. King pleaded guilty to sexual misconduct with a minor as a class D felony in exchange for the State dropping the class C felony charge. He also pleaded guilty to the contributing to the delinquency charge.

At the sentencing hearing, the State found the following aggravating factors: 1) King's prior criminal history including his arrest for a new offense and a probation violation after he pleaded guilty to the offenses in this case; and 2) substantial damage to the victim's personality, lifestyle, and mental status. In addition, the court found the following "de-minimus" mitigating circumstances: 1) King pleaded guilty; and 2) King is paying child support for his two-year-old daughter. Tr. at 48. At the conclusion of the hearing, the court sentenced King to three years for the sexual misconduct count, and one year for contributing to the delinquency of a minor, sentences to run concurrently for a total sentence of three years.

The sole issue for our review is whether the trial court erred in sentencing King. At the outset, we note that because the offenses in this case were committed after the

April 25, 2005, revisions to the sentencing statutes, we review King's sentence under the advisory sentencing scheme. *Anglemeier v. State*, 868 N.E.2d 482, 491 (Ind. 2007). When evaluating sentencing challenges under the advisory sentencing scheme, we first confirm that the trial court issued the required sentencing statement, which includes a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* at 490. If the recitation includes a finding of aggravating or mitigating circumstances, the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.*

So long as the sentence is in within the statutory range, it is subject to review only for abuse of discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. *Id.* Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id.* at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to properly weigh such factors. *Id.* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose

any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

Here, King first contends that trial court overlooked the following mitigating factors: King's remorse and history of drug abuse. However, King did not raise these mitigating factors to the trial court.¹ This court has previously explained that if the defendant fails to raise a mitigating factor at sentencing, we will presume the factor is not significant, and the defendant is precluded from raising it for the first time on appeal. *Pennington v. State*, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005).

King also argues that the trial court failed to give the proper mitigating weight to his guilty plea. However, a guilty plea does not automatically amount to a significant mitigating factor. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). For example, a

¹ At trial, King raised the following mitigating factors: 1) he pleaded guilty; 2) potential hardship on his two-year-old daughter; and 3) the victim had "a part in this as well." Tr. at 45.

guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Here, the State reduced the C felony to a D felony in exchange for King's guilty plea. In light of this substantial benefit to King, we find no error in the trial court's failure to find the guilty plea as a mitigating factor.

Lastly, King argues that his three-year sentence is inappropriate. When reviewing a sentence imposed by the trial court, we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(b). Here, with regard to the character of the offender, King has an extensive criminal history that includes four misdemeanor convictions, two of which are drug related. He was also arrested for another offense and violated his probation after he pleaded guilty to the offenses in this case. King's prior contacts with the law have not caused him to reform himself. With regard to the nature of the offense, twenty-two-year-old King took a fifteen-year-old girl to a hotel room and provided her with alcohol. When the girl became intoxicated, King made sexual advances towards her and fondled her. Based upon our review of the evidence, we see nothing in the character of this offender or in the nature of this offense that would suggest that King's three-year sentence is inappropriate.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.